

FILED  
MISSOULA, MT

2007 NOV 7 PM 5 47

PATRICK E. DUFFY  
BY \_\_\_\_\_

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

JEAN S. APPLEGATE,	)	CV 06-188-M-DWM-JCL
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
MICHAEL J. ASTRUE, Commissioner of	)	
Social Security,	)	
	)	
Defendant.	)	
	)	

Plaintiff Applegate brings this action under 42 U.S.C. § 405(g) challenging the decision of the Commissioner of Social Security terminating her award of disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. § 401-403. The Social Security Administration determined during a continuing disability review that Applegate was no longer disabled and that her benefits should cease. Applegate appealed the decision, and an administrative law judge concluded that her benefits had been properly terminated.

Applegate seeks review in this Court. The parties filed cross-motions for summary judgment before United States Magistrate Judge Jeremiah C. Lynch, and Judge Lynch issued

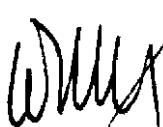
Findings and Recommendations in which he concludes that Applegate's benefits were wrongly terminated and should be reinstated. Judge Lynch found that the administrative law judge's determination that Applegate's condition had improved was not supported by substantial evidence, meaning the administrative judge erred in terminating Applegate's benefits.

The parties did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Upon review of the Magistrate's decision, I can find no clear error with his recommendation and therefore adopt in full.

Accordingly, IT IS HEREBY ORDERED that Applegate's motion for summary judgment (Doc. No. 8) is GRANTED, the Commissioner's motion for summary judgment (Doc. No. 11) is DENIED, and that the Commissioner's decision be REVERSED and Applegate's benefits reinstated accordingly.

DATED this 7 day of November, 2007.

  
Donald W. Molloy, Chief Judge  
United States District Court